

# **EXHIBIT 5**

**July 30, 2009****MORTGAGEE LETTER 2009-23****TO: ALL APPROVED MORTGAGEES****SUBJECT: Making Home Affordable Program:  
FHA's Home Affordable Modification Loss Mitigation Option**

On May 20, 2009, the President signed the "Helping Families Save Their Homes Act of 2009." This new law provides the Federal Housing Administration (FHA) with additional loss mitigation authority to assist FHA mortgagors under the Making Home Affordable Program (MHA). The MHA Program is designed to help homeowners retain their homes and to prevent the destructive impact of foreclosures on families and communities.

One key component of MHA provides homeowners the opportunity to reduce their mortgage payments by the use of a loan modification through the Home Affordable Modification Program. When initially introduced to the public, MHA excluded FHA insured mortgages, stating that FHA would develop its own standalone program. This Mortgagee Letter announces a new FHA Loss Mitigation option, the FHA-Home Affordable Modification Program (FHA-HAMP). FHA-HAMP will provide homeowners in default a greater opportunity to reduce their mortgage payments to a sustainable level. This Mortgagee Letter is effective August 15, 2009.

**Basic Program Guidelines**

The new FHA-HAMP authority will allow the use of a partial claim up to 30 percent of the unpaid principal balance as of the date of default combined with a loan modification. The objective of FHA-HAMP is to assist FHA mortgagors who are in default to modify their mortgage to an affordable payment. According to Mortgagee Letter 2000-05 and subsequent guidance, disposition options (pre-foreclosure sales and deeds-in lieu of foreclosure) are available immediately upon default, if the cause of the default is incurable, i.e. the borrower has no realistic opportunity to replace the lost income or reduce expenses sufficiently to meet the mortgage obligation.

To confirm if the mortgagor is capable of making the new FHA-HAMP payment, the mortgagor must successfully complete a trial payment plan. The trial payment plan shall be for a three month period and the mortgagor must make each scheduled payment on time. The mortgagor's monthly payment required during the trial payment plan must be the amount of the future modified mortgage payment. The Mortgagee must service the mortgage during the trial period in the same manner as it would service a mortgage in forbearance. If the mortgagor does not successfully complete the trial payment plan by making the three payments on time, the mortgagor is no longer eligible for FHA-HAMP. Prior to proceeding to foreclosure, the Mortgagee must re-examine and re-evaluate the borrower's financial condition and confirm that none of FHA's other Loss Mitigation options could assist the mortgagor.

The attachment to this Mortgage Letter supplements program guidelines for FHA-HAMP, including a requirement that the servicer obtain an executed Hardship Affidavit (available at [HYPERLINK "https://www.hmpadmin.com/portal/docs/hamp\_borrower/hamphardshipaffidavit.pdf"]) from every

mortgagor and co-mortgagor seeking an FHA-HAMP. FHA-HAMP is a permanent addition to HUD's Loss Mitigation Program as of the date of this Mortgagee Letter.

### **Debt to Income Ratios**

To be eligible under FHA-HAMP, the front end debt to income ratio must be as close as possible, but not less than, 31 percent. This ratio is defined as the total monthly mortgage payment (PITI) for the modified mortgage divided by the mortgagor's gross monthly income (the "Front End Ratio"). The back end debt to income ratio must not exceed 55 percent and is defined as the total monthly mortgage payment plus all recurring monthly debt divided by the mortgagor's gross monthly income (the "Back End Ratio"). Please refer to the sections in the Attachment regarding Underwriting – Front End and Back End Debt to Income Ratios.

### **Calculation of Maximum Partial Claim Amount under FHA-HAMP**

The maximum partial claim amount under FHA-HAMP consists of the sum of (i) arrearages, (ii) legal fees and foreclosure costs related to a canceled foreclosure action and (iii) principal reduction. Arrearages that may be included in the partial claim shall not exceed 12 months of PITI. The maximum partial claim amount under FHA-HAMP is 30 percent of the outstanding principal balance as of the date of default. The principal deferment on the modified mortgage is determined by multiplying the outstanding principal balance by 30 percent and then reducing that amount by arrearages advanced to cure the default for up to 12 months PITI, and any foreclosure costs incurred to that point subject to the requirements provided in Mortgagee Letter 2008-21. The principal deferment amount for a specific case shall be limited to such an amount that will bring the mortgagor(s) total monthly mortgage payment to 31 percent of gross monthly income.

#### **Example**

Mortgagor had a reduction of income and is delinquent 3 full mortgage payments. The unpaid principal balance on the mortgage on the date of default is \$150,000 and the monthly payment is \$1,220 (consisting of P&I of \$920 and escrows, including MIP, of \$300). The financial analysis reveals that the mortgagor's gross monthly income is \$3,500 and the total monthly other recurring debt payments are \$800.

In order to fulfill the 31% Front End Ratio requirement, the mortgagor(s) total monthly mortgage payment would have to be reduced to \$1,085 ( $\$3,500 \times 31\%$ ). Therefore, P&I would have to be reduced to \$785 (\$1,085 total monthly mortgage payment less \$300 escrow and MIP). Assuming that the loan modification will have an interest rate of 6% and a P&I of \$785, the new mortgage amount would have to be \$130,931, resulting in a principal reduction of \$19,069 (\$150,000 unpaid principal balance less \$130,931). In this example, the mortgagor's Back End ratio is 53.9% ( $\$1,885/\$3,500$ ), which satisfies the 55% Back End Ratio limitation.

In this example, the maximum principal deferment is \$41,340 (30% of \$150,000, less the \$3,660 delinquency, or  $\$45,000 - \$3,660$ ). However, based on their gross income, mortgagor is eligible only for a principal deferment of \$19,069 plus \$3,660 arrearages (which would include any foreclosure costs incurred to that point, in accord with Mortgagee Letter 2008-21) for the total Partial Claim of \$22,729.

### **Requirements to Use FHA-HAMP**

FHA-HAMP can be utilized only if the mortgagor(s) does not qualify for current loss mitigation home retention options (priority order FHA Special Forbearance, Loan Modification and Partial Claim) under existing guidelines (ML 2008-21, 2003-19, 2002-17, 2000-05). To qualify for the FHA-HAMP program, Mortgagees must evaluate the defaulted mortgage for loss mitigation actions using the aforementioned priority order. According to Mortgagee Letter 2000-05 and subsequent guidance, disposition options (pre-foreclosure sales and deeds-in lieu of foreclosure) are available immediately upon default, if the cause of the default is incurable, i.e. the borrower has no realistic opportunity to replace the lost income or reduce expenses sufficiently to meet the mortgage obligation.

If the mortgagor does not successfully execute the loan modification, the mortgagor is no longer eligible for FHA-HAMP. In such cases, per 24 CFR 203.355, the Mortgagee must re-evaluate the mortgagor's eligibility for the other appropriate loss mitigation actions prior to commencing or continuing a foreclosure.

### **Mortgagee Incentives**

Mortgagees that utilize FHA-HAMP are eligible to receive incentive payments. Mortgagees utilizing this initiative will be allowed to first file for a partial claim (to bring the loan current and defer principal where appropriate), followed by a loan modification claim (claim type 32). Under FHA-HAMP, the Mortgagee may receive an incentive fee of up to \$1,250. This total includes \$500 for the partial claim and \$750 for the loan modification. Mortgagees may also claim up to \$250 for reimbursement for a title search and/or recording fees.

### **Partial Claim Filing and Document Delivery**

Mortgagees must file a claim for insurance benefits for the partial claim within the 60-day timeframe stated in ML 2003-19 to receive incentive fees for the FHA-HAMP loss mitigation action. Any previous outstanding partial claim(s) must be subordinated and the mortgage company must provide HUD's Secretary-Held servicing contractor (see 'Remittance' below) with a subordination agreement to request subordination.

### **Monitoring**

FHA will monitor Mortgagees for compliance with the terms of this Mortgagee Letter and will take administrative actions, including sanctions and penalties, against all parties for non-compliance.

### **Remittance**

Please note that all provisions described in the aforementioned existing guidelines, such as Repayment Terms, Option Failure and Disclosures apply also, except as specifically changed under FHA-HAMP.

Mortgagees must forward all required documentation, including subordination requests, and advise all parties to send any payments for the Partial Claims to HUD's Secretary-Held Assets

Servicing Contractor which is currently located at:

C&L Service Corp. / Morris-Griffin Corp.  
2488 East 81<sup>st</sup> Street, Suite 700  
Tulsa, Oklahoma 74137

Toll Free Phone:	(866) 377-8667	Toll Free Fax:	(866) 249-0626
Local:	(918) 551-5300	Local Fax:	(918) 551-5399

Current information about the Secretary-Held Assets Servicing Contractor is located at:  
[HYPERLINK "<http://www.hud.gov/offices/hsg/sfh/nsc/fmaddr.cfm>"]

### **Information Collection Requirement**

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0060, 2502-0523, 2502-0429, and 1505-0216. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

Any questions regarding this Mortgage Letter may be directed to HUD's National Servicing Center (NSC) at 888-297-8685 or [HYPERLINK "<mailto:hsg-lossmit@hud.gov>"]. Persons with hearing or speech impairments may reach this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

David H. Stevens  
Assistant Secretary for Housing –  
Federal Housing Commissioner

Attachment – Guidelines for FHA-HAMP